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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[C-552-810]

Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers and exporters of circular welded carbon-quality steel pipe (“circular welded pipe”) from the Socialist Republic of Vietnam (“Vietnam”). For information on the estimated subsidy rates, see the “Suspension of Liquidation” section of this notice.

EFFECTIVE DATE: [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Austin Redington or Christopher Siepmann, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1664 or (202) 482-7958, respectively.

SUPPLEMENTARY INFORMATION:

Petitioners

The petitioners in this investigation are Wheatland Tube, Allied Tube and Conduit, JMC Steel Group, and United States Steel Corporation (collectively, “Petitioners”).

Case History

The following events have occurred since the publication of the Department of Commerce's ("Department") notice of initiation in the Federal Register. See Circular Welded Carbon-Quality Steel Pipe from India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations, 76 FR 72173 (November 22, 2011) ("Initiation Notice"), and the accompanying Initiation Checklist.

On December 16, 2011, the U.S. International Trade Commission ("ITC") published its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of circular welded pipe from India, Oman, the United Arab Emirates, and Vietnam. See Circular Welded Carbon-Quality Steel Pipe from India, Oman, the United Arab Emirates, and Vietnam, 76 FR 78313 (December 16, 2011).

The Department released U.S. Customs and Border Protection ("CBP") entry data for U.S. imports of circular welded pipe from Vietnam between January 1, 2010, and December 31, 2010, to be used as the basis for respondent selection. See Memorandum from Joshua Morris, International Trade Compliance Analyst to the File, "Release of Customs and Border Protection ("CBP") Data," dated November 22, 2011. The CBP entry data covered products included in this investigation which entered under the Harmonized Tariff Schedule of the United States ("HTSUS") numbers likely to include subject merchandise: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

On December 15, 2011, the Department issued its respondent selection analysis. Given available resources, the Department determined it could examine no more than two producers/exporters and selected SeAH Steel VINA Corp. ("SeAH VINA") and Vietnam

Haiphong Hongyuan Machinery Manufactory Co., Ltd. (“Haiphong Hongyuan”). See Memorandum from Susan Kuhbach, Office Director, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Respondent Selection Memorandum,” dated December 15, 2011. These companies were the two largest producers/exporters of subject merchandise, based on aggregate volume, to the United States.

On December 19, 2011, the Department postponed the deadline for the preliminary determination in this investigation until March 26, 2012. See Circular Welded Carbon-Quality Steel Pipe from India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Countervailing Duty Investigations, 76 FR 78615 (December 19, 2011). In conjunction with this postponement, the Department also postponed the deadline for the submission of new subsidy allegations until February 15, 2012. See Memorandum to the File from Joshua S. Morris, “New Subsidy Allegation Deadline: Circular Welded Carbon-Quality Steel Pipe from India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam,” dated December 15, 2011.

On January 3, 2012, SeAH VINA requested that the Department terminate the countervailing duty (“CVD”) investigation of circular welded pipe from Vietnam, stating that in a recent decision the U.S. Court of Appeals for the Federal Circuit (“CAFC”) found that the Department does not have the authority to apply the CVD law to countries the Department considers non-market economies. On January 12, 2012, the Government of Vietnam (“GOV”)

also requested that the Department terminate the CVD investigation pursuant to the CAFC's ruling.

On December 20, 2011, the Department issued CVD questionnaires to the GOV, SeAH VINA, and Haiphong Hongyuan. We received initial questionnaire responses ("IQR") from the GOV, SeAH VINA, and Haiphong Hongyuan on February 16, 2012. Supplemental questionnaires were sent to the GOV, SeAH VINA, and Haiphong Hongyuan on February 27, 2012. We received a supplemental questionnaire response ("SQR") from Haiphong Hongyuan to the supplemental questionnaire on March 9, 2012, and we received SQRs from the GOV and SeAH VINA to the supplemental questionnaire on March 12, 2012.

One of the petitioning parties, Wheatland Tube, requested two extensions of the deadline for filing new subsidy allegations. As a result, this deadline was extended from February 15 to February 24, and then to February 28, 2012. See Memorandum to the File from Susan Kuhbach, "New Subsidy Allegation Deadline: Circular Welded Carbon-Quality Steel Pipe from India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam," dated February 6, 2012, and Letter to Interested Parties, dated February 24, 2012. No new subsidy allegations were received in this investigation.

We received deficiency comments on the GOV's, SeAH VINA's, and Haiphong Hongyuan's responses from Wheatland Tube on February 22, 2012 ("Deficiency Comments"). We received pre-preliminary comments from Wheatland Tube on March 14, 2012. On March 19, 2012, we received pre-preliminary comments from SeAH. We received additional pre-preliminary comments from Wheatland Tube on March 20, 2012.

The GOV failed to respond to some of the Department's February 27, 2012 questions in its March 12, 2012 supplemental questionnaire response. Rather than requesting an extension of

the deadline to submit responsive information, the GOV informed the Department that it did not have time to gather requested information regarding certain banks in time for the questionnaire's deadline. The GOV thereafter submitted its responses to these questions on March 16, 2012. Pursuant to 19 CFR 351.302(d)(i), we are rejecting this untimely filed information and will notify the GOV as specified by 19 CFR 351.302(2).

Period of Investigation

The period for which we are measuring subsidies, i.e., the period of investigation ("POI"), is January 1, 2010, through December 31, 2010.

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our Initiation Notice for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997), and Initiation Notice, 76 FR at 72173. On December 5, 2011, SeAH VINA filed comments arguing that the treatment of double and triple stenciled pipe in the scope of these investigations differs from previous treatment of these products under other orders on circular welded pipe. Specifically, SeAH VINA claims that the Brazilian, Korean, and Mexican orders on these products exclude "Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil and gas pipelines ..." See, e.g., Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea, and Taiwan; and Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Order, 76 FR 66899, 66900 (Oct. 28, 2011). According to SeAH VINA: (i) if the term "class or kind of merchandise" has meaning, it cannot have a

different meaning when applied to the same products in two different cases; and (ii) the distinction between standard and line pipe reflected in the Brazil, Korean and Mexican orders derives from customs classifications administered by CBP and, thus, is more administrable.

On December 14, 2011, Allied Tube and Conduit, JMC Steel Group, and Wheatland Tube (collectively, “certain Petitioners”) responded to SeAH VINA’s comments stating that the scope as it appeared in the Initiation Notice reflected Petitioners’ intended coverage. Certain Petitioners contend that pipe that is multi-stenciled to both line pipe and standard pipe specifications and meets the physical characteristics listed in the scope (i.e., is 32 feet in length or less; is less than 2.0 inches (50mm) in outside diameter; has a galvanized and/or painted (e.g., polyester coated) surface finish; or has a threaded and/or coupled end finish) is ordinarily used in standard pipe applications. In recent years, certain Petitioners state, the Department has rejected end-use scope classifications, preferring instead to rely on physical characteristics to define coverage, and the scope of these investigations has been written accordingly. Therefore, certain Petitioners ask the Department to reject SeAH VINA’s proposed scope modification.

We agree with certain Petitioners that the Department seeks to define the scopes of its proceedings based on the physical characteristics of the merchandise. See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China, 73 FR 31970 (June 5, 2008) and accompanying Issues and Decision Memorandum at Comment 1. Moreover, we disagree with SeAH VINA’s contention that once a “class or kind of merchandise” has been established that the same scope description must apply across all proceedings involving the product. For example, as the Department has gained experience in administering antidumping duty (“AD”) and CVD orders, it has shifted away from end use

classifications to scopes defined by the physical characteristics. Id. Thus, proceedings initiated on a given product many years ago may have end use classifications while more recent proceedings on the product would not. Compare Countervailing Duty Order: Oil Country Tubular Goods from Canada, 51 FR 21783 (June 16, 1986) (describing subject merchandise as being “intended for use in drilling for oil and gas”) with Certain Oil Country Tubular Goods From the People’s Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 75 FR 3203 (January 20, 2010) (describing the subject merchandise in terms of physical characteristics without regard to use or intended use). Finally, certain Petitioners have indicated the domestic industry’s intent to include multi-stenciled products that otherwise meet the physical characteristics set out in the scope. Therefore, the Department is not adopting SeAH VINA’s proposed modification of the scope.

Scope of the Investigation

This investigation covers welded carbon-quality steel pipes and tube, of circular cross-section, with an outside diameter (“O.D.”) not more than 16 inches (406.4 mm), regardless of wall thickness, surface finish (e.g., black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (e.g., American Society for Testing and Materials International (“ASTM”), proprietary, or other) generally known as standard pipe, fence pipe and tube, sprinkler pipe, and structural pipe (although subject product may also be referred to as mechanical tubing). Specifically, the term “carbon quality” includes products in which: (a) iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 1.80 percent of manganese;

- (ii) 2.25 percent of silicon;
- (iii) 1.00 percent of copper;
- (iv) 0.50 percent of aluminum;
- (v) 1.25 percent of chromium;
- (vi) 0.30 percent of cobalt;
- (vii) 0.40 percent of lead;
- (viii) 1.25 percent of nickel;
- (ix) 0.30 percent of tungsten;
- (x) 0.15 percent of molybdenum;
- (xi) 0.10 percent of niobium;
- (xii) 0.41 percent of titanium;
- (xiii) 0.15 percent of vanadium;
- (xiv) 0.15 percent of zirconium.

Subject pipe is ordinarily made to ASTM specifications A53, A135, and A795, but can also be made to other specifications. Structural pipe is made primarily to ASTM specifications A252 and A500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. Fence tubing is included in the scope regardless of certification to a specification listed in the exclusions below, and can also be made to the ASTM A513 specification. Sprinkler pipe is designed for sprinkler fire suppression systems and may be made to industry specifications such as ASTM A53 or to proprietary specifications. These products are generally made to standard O.D. and wall thickness combinations. Pipe multi-stenciled to a standard and/or structural specification and to other specifications, such as American Petroleum Institute (“API”) API-5L specification, is also covered by the scope of this

investigation when it meets the physical description set forth above, and also has one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50mm) in outside diameter; has a galvanized and/or painted (e.g., polyester coated) surface finish; or has a threaded and/or coupled end finish.

The scope of this investigation does not include: (a) pipe suitable for use in boilers, superheaters, heat exchangers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) finished electrical conduit; (c) finished scaffolding;¹ (d) tube and pipe hollows for redrawing; (e) oil country tubular goods produced to API specifications; (f) line pipe produced to only API specifications; and (g) mechanical tubing, whether or not cold-drawn. However, products certified to ASTM mechanical tubing specifications are not excluded as mechanical tubing if they otherwise meet the standard sizes (e.g., outside diameter and wall thickness) of standard, structural, fence and sprinkler pipe. Also, products made to the following outside diameter and wall thickness combinations, which are recognized by the industry as typical for fence tubing, would not be excluded from the scope based solely on their being certified to ASTM mechanical tubing specifications:

1.315 inch O.D. and 0.035 inch wall thickness (gage 20)

1.315 inch O.D. and 0.047 inch wall thickness (gage 18)

1.315 inch O.D. and 0.055 inch wall thickness (gage 17)

1.315 inch O.D. and 0.065 inch wall thickness (gage 16)

1.315 inch O.D. and 0.072 inch wall thickness (gage 15)

1.315 inch O.D. and 0.083 inch wall thickness (gage 14)

¹ Finished scaffolding is defined as component parts of a final, finished scaffolding that enters the United States unassembled as a “kit.” A “kit” is understood to mean a packaged combination of component parts that contain, at the time of importation, all the necessary component parts to fully assemble a final, finished scaffolding.

1.315 inch O.D. and 0.095 inch wall thickness (gage 13)

1.660 inch O.D. and 0.047 inch wall thickness (gage 18)

1.660 inch O.D. and 0.055 inch wall thickness (gage 17)

1.660 inch O.D. and 0.065 inch wall thickness (gage 16)

1.660 inch O.D. and 0.072 inch wall thickness (gage 15)

1.660 inch O.D. and 0.083 inch wall thickness (gage 14)

1.660 inch O.D. and 0.095 inch wall thickness (gage 13)

1.660 inch O.D. and 0.109 inch wall thickness (gage 12)

1.900 inch O.D. and 0.047 inch wall thickness (gage 18)

1.900 inch O.D. and 0.055 inch wall thickness (gage 17)

1.900 inch O.D. and 0.065 inch wall thickness (gage 16)

1.900 inch O.D. and 0.072 inch wall thickness (gage 15)

1.900 inch O.D. and 0.095 inch wall thickness (gage 13)

1.900 inch O.D. and 0.109 inch wall thickness (gage 12)

2.375 inch O.D. and 0.047 inch wall thickness (gage 18)

2.375 inch O.D. and 0.055 inch wall thickness (gage 17)

2.375 inch O.D. and 0.065 inch wall thickness (gage 16)

2.375 inch O.D. and 0.072 inch wall thickness (gage 15)

2.375 inch O.D. and 0.095 inch wall thickness (gage 13)

2.375 inch O.D. and 0.109 inch wall thickness (gage 12)

2.375 inch O.D. and 0.120 inch wall thickness (gage 11)

2.875 inch O.D. and 0.109 inch wall thickness (gage 12)

2.875 inch O.D. and 0.134 inch wall thickness (gage 10)

2.875 inch O.D. and 0.165 inch wall thickness (gage 8)

3.500 inch O.D. and 0.109 inch wall thickness (gage 12)

3.500 inch O.D. and 0.148 inch wall thickness (gage 9)

3.500 inch O.D. and 0.165 inch wall thickness (gage 8)

4.000 inch O.D. and 0.148 inch wall thickness (gage 9)

4.000 inch O.D. and 0.165 inch wall thickness (gage 8)

4.500 inch O.D. and 0.203 inch wall thickness (gage 7)

The pipe subject to this investigation is currently classifiable in Harmonized Tariff Schedule of the United States (“HTSUS”) statistical reporting numbers 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5050, and 7306.50.5070. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the investigation is dispositive.

Alignment of Final Determination

On November 22, 2011, the Department initiated an AD investigation concurrent with this CVD investigation of circular welded pipe from Vietnam. See Circular Welded Carbon-Quality Steel Pipe from India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations, 76 FR 72164 (November 22, 2011). The scope of the merchandise being covered is the same for both the AD and CVD investigations. On March 23, 2012, Petitioners submitted a letter, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (“the Act”), requesting alignment of the final CVD determination with the final determination in the companion AD investigation. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), the final

CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued on August 6, 2012.

Application of the Countervailing Duty Law to Imports from Vietnam

On April 1, 2010, the Department published Bags from Vietnam Final Determination in which we found the CVD law applicable to Vietnam. See Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination, 75 FR 16428 (April 1, 2010) (“Bags from Vietnam Final Determination”), and accompanying Issues and Decision Memorandum. Furthermore, on March 13, 2012, HR 4105 was enacted which makes clear that the Department has the authority to apply the CVD law to non-market economies such as Vietnam. The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding. See HR 4105, 112th Cong. 1(b) (2012)(enacted).

Additionally, for reasons stated in Bags from Vietnam Final Determination, and accompanying Issues and Decision Memorandum at Comment 3, we are using the date of January 11, 2007, the date on which Vietnam became a member of the WTO, as the date from which the Department will identify and measures subsidies in Vietnam for purposes of CVD investigations.

Subsidies Valuation Information

Allocation Period

The average useful life (“AUL”) period in this proceeding, as described in 19 CFR 351.524(d)(2), is 15 years according to the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System. See U.S. Internal Revenue Service Publication 946 (2008), *How to Depreciate Property*, at Table B-2: Table of Class Lives and Recovery Periods. No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii) through (v) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade ("CIT") has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. See Fabrique de Fer de Charleroi, SA v. United States, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

SeAH VINA

SeAH VINA reported that it is a wholly owned subsidiary of SeAH Steel Corp. ("SeAH Steel"), a manufacturer of pipe and other steel products based in South Korea. SeAH VINA also reported that it does not have any subsidiaries, nor does it hold ownership claim in any other company.

SeAH VINA's parent company, SeAH Steel, owns 50 percent of the shares of Vietnam Steel Pipe Corp. ("Vinapipe"), a Vietnamese producer of circular welded pipe. According to SeAH VINA, the remaining 50% of Vinapipe is owned by Vietnam Steel Corporation, a corporation wholly-owned by the GOV. In its Deficiency Comments on SeAH VINA's questionnaire response, Wheatland Tube argued that cross-ownership exists between SeAH VINA and Vinapipe and, thus, SeAH VINA should have provided a questionnaire response on behalf of Vinapipe. In our supplemental questionnaire to SeAH VINA, we asked several questions in order to determine whether its relationship with Vinapipe met the cross-ownership standard under 19 CFR 351.525(b)(6)(vi). SeAH VINA provided the investment certificates and charter documents for Vinapipe as well as the joint venture agreement between SeAH Steel and Vietnam Steel Corporation. See SeAH VINA's SQR at Appendix S-1.

Based upon our examination of these documents, as well as other information on the record, we do not find evidence that Vinapipe is controlled by either SeAH Steel or SeAH VINA under 19 CFR 351.525(b)(6)(vi). Specifically, the voting structure of Vinapipe requires at least a 65% vote on any management or operational issues, which would require support from both SeAH Steel and Vietnam Steel Corporation. In addition, each party selects an equal number of members of the Board of Directors (referred to as the Members' Council) and the nomination of the Chairman and General Director rotates between SeAH Steel and Vietnam Steel Corporation (i.e., if it is one party's turn to select the Chairman, then the other Party selects the General Director). Furthermore, SeAH VINA reported that there were no transactions, business agreements, or shared board members between it and Vinapipe. See SeAH VINA's SQR at 3-6.

Therefore, we preliminarily determine that Vinapipe does not meet the cross-ownership standard of 19 CFR 351.525(b)(6)(vi) because the evidence does not support a finding that SeAH

Steel can use or direct the individual assets of Vinapipe in essentially the same ways it can use its own assets. Accordingly, we have not requested a questionnaire response from Vinapipe. We are attributing subsidy benefits received by SeAH VINA solely to the sales of SeAH VINA.

Wheatland Tube has also stated that SeAH VINA is affiliated with the Korean steel company Pohang Iron & Steel Co. Ltd. (“POSCO”), and that POSCO provides SeAH VINA with raw material inputs; thus, Wheatland Tube states that a questionnaire response is due from POSCO. Wheatland Tube states that the affiliation between SeAH VINA and POSCO is based upon shares held by POSCO in SeAH VINA’s Korean parent company, SeAH Steel.

While the Department has found SeAH Steel and POSCO to be affiliated in certain AD investigations of imports from Korea, there is nothing on the record, nor has Wheatland Tube provided any information, to demonstrate cross-ownership as defined under 19 CFR 351.525(b)(6)(vi) between SeAH VINA and POSCO. Accordingly, we preliminarily determine that cross-ownership does not exist between SeAH VINA and POSCO; thus, there is no need to solicit a questionnaire response from POSCO. Furthermore, Wheatland Tube has provided no information that POSCO is providing SeAH VINA with an input that is produced in Vietnam. According to the information submitted by Wheatland Tube, POSCO’s steel facility in Vietnam is currently being constructed and will not be operational until 2013.

Haiphong Hongyuan

Haiphong Hongyuan informed us that it is wholly owned by MAT Holdings, Inc., which is located in the United States. See Haiphong Hongyuan’s IQR, at 2. According to Haiphong Hongyuan, it has no affiliates in Vietnam, and it did not export any subject merchandise to the United States through a trading company. Therefore, we are attributing subsidy benefits received by Haiphong Hongyuan solely to Haiphong Hongyuan’s sales.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. Import Duty Exemptions for Imported Raw Materials for Exported Goods

Pursuant to Article 3.3 of the *Law on Import and Export Tax*, goods imported from foreign countries into non-tariff zones for use only in non-tariff zones are not liable for import duties. In accordance with *Decree 29/2008/ND-CP issuing regulations on industrial zones, export processing zones and economic zones*, these same rules extend to export processing zones and export processing enterprises.

Haiphong Hongyuan reported that it qualified for duty exemptions on its imported raw materials used to produce exported goods based on its designation as a qualified export processing enterprise. The GOV provided Haiphong Hongyuan's investment certificate, which confirmed its designation as an export processing enterprise.

SeAH VINA reported that it paid the applicable import tariffs on its raw material imports.

Import duty exemptions on inputs for exported products constitute countervailable export subsidies to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste. See 19 CFR 351.519(a)(1)(ii). However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products, and in what amounts. This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export. If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an

examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission or drawback is countervailable. See 19 CFR 351.519(4)(i)-(ii). In Bags from Vietnam Final Determination, the Department determined that the GOV does not have such a system and companies are, in fact, allowed to choose their own yield rates within a range established by the GOV. Thus, we found the duty exemptions on raw materials for exports to be fully countervailable. See Bags from Vietnam Final Determination, and accompanying Issues and Decision Memorandum at Comment 10.

We preliminarily determine that Haiphong Hongyuan received a countervailable subsidy, as described by section 771(5)(A) of the Act, under the Import Duty Exemptions for Imported Raw Materials for Exported Goods program. We preliminarily determine this program to be specific under section 771(5A)(A) and (B) of the Act because benefits under this program are contingent upon export performance. In addition, we preliminarily determine a financial contribution exists pursuant to section 771(5)(D)(ii) of the Act, as the exempted duties represent revenue forgone by the GOV.

Normally, we treat exemptions from indirect taxes and import charges on raw materials as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate the benefits to the year in which they were received. Thus, to calculate the subsidy rate for Haiphong Hongyuan, we first determined the total value of duties exempted during the POI by multiplying the value of each raw material imported during the POI by the applicable tariff rate. We then divided this by the value of Haiphong Hongyuan's export sales.

On this basis, we preliminarily determine that Haiphong Hongyuan received a countervailable subsidy of 8.04 percent ad valorem. See Memorandum from Christopher

Siepmann, International Trade Compliance Analyst to Yasmin Nair, Program Manager, “Preliminary Calculation Memorandum for Haiphong Hongyuan,” dated March 26, 2012 (“Haiphong Hongyuan Prelim Calc Memo”).

B. Import Duty Exemptions for Imported Fixed Assets, Spare Parts, and Accessories for Export Processing Enterprises or Export Processing Zones²

Article 16.6 of the *Law on Import Tax and Export Tax*, dated June 14, 2005, provides duty exemptions on imported fixed assets, spare parts, and accessories for projects entitled to investment incentives. Pursuant to *Decree No. 108/2006/ND-CP, Detailing and Guiding the Implementation of a Number of Articles of the Investment Law*, projects in certain geographical areas, including industrial development zones, are entitled to receive these investment incentives.

The GOV reported that Haiphong Hongyuan’s location in the Do Son Hai Phong Industrial Zone made it eligible to receive duty exemptions on fixed assets. However, Haiphong Hongyuan reported that it claimed these import duty exemptions pursuant to its designation as a qualified export processing enterprise. As discussed above for raw material imports, Article 3.3 of the *Law on Import and Export Tax*, permits imports into non-tariff zones to be exempt from duties so long as they are only in non-tariff zones. For this preliminary determination, we are relying on Haiphong Hongyuan’s explanation of the basis for its eligibility.

² The Department initiated on this program under the title “*Exemption of Import Duties on Imports of Fixed Assets, Spare Parts and Accessories for Industrial Zones*.” Because we now have a better understanding of why import duty exemptions may be granted, we have analyzed benefits received by Haiphong Hongyuan and SeAH VINA under two different programs, even though both companies are located in industrial zones. This is because the respondents receive benefits under separate provisions. Haiphong Hongyuan’s benefits have been analyzed as “*Import Duty Exemptions for Imports of Fixed Assets, Spare Parts and Accessories for Export Processing Enterprises or Export Processing Zones*.” SeAH VINA is addressed under “*Import Duty Exemptions for Imports of Fixed Assets, Spare Parts and Accessories for Encouraged Projects*,” which replaces both “*Duty Exemptions on Goods for the Creation of Fixed Assets for Encouraged Projects*” and “*Exemption of Import Duties on Imports of Fixed Assets, Spare Parts and Accessories for Industrial Zones*.”

We preliminarily determine that, for Haiphong Hongyuan, this program is specific and constitutes an export subsidy pursuant to sections 771(5A)(A) and (B) of the Act, because benefits under this program are contingent upon export performance. In addition, we preliminarily determine a financial contribution exists pursuant to section 771(5)(D)(ii) of the Act because the exempted duties represent revenue forgone by the GOV. Accordingly, we preliminarily determine that the benefits provided to Haiphong Hongyuan under this program constitute a countervailable subsidy within the meaning of section 771(5)(A) of the Act.

Consistent with 19 CFR 351.524(c)(1), we generally treat exemptions from indirect taxes and import charges, such as the tariff exemptions for spare parts and accessories, as conferring recurring benefits. Thus, we allocate the benefits to the year in which they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

Haiphong Hongyuan provided a list of tariff exemptions that it received for imported fixed assets, spare parts, and accessories since its establishment in 2008. See Haiphong Hongyuan's IQR at Exhibit 15. Haiphong Hongyuan's list of tariff exemptions did not identify which items were fixed assets and which were spare parts and accessories. Therefore, the Department relied upon the items' descriptions to classify each item as either a fixed asset or spare part/accessory. Consistent with Bags from Vietnam Final Determination, we are treating duty exemptions on fixed assets as non-recurring subsidies and duty exemptions on spare parts and accessories as recurring subsidies.

For years prior to the POI, the duty exemptions on fixed assets were less than 0.5 percent of Haiphong Hongyuan's exports in those years. Therefore, in accordance with 19 CFR 351.524(b)(2), the benefits were expensed in the year of receipt and did not give rise to a countervailable subsidy in the POI. Regarding its imports during the POI, our review shows that although Haiphong Hongyuan imported spare parts and accessories, it paid the applicable duty rate on those items. We applied the "expense test" described above to Haiphong Hongyuan's import exemptions for fixed assets and found that total exemptions in the POI were also less than 0.5 percent and, hence, expensed in the POI.

On this basis, we preliminarily determine that Haiphong Hongyuan received a countervailable subsidy of 0.02 percent ad valorem. See Haiphong Hongyuan Prelim Calc Memo.

C. Import Duty Exemptions for Imported Fixed Assets, Spare Parts, and Accessories for Encouraged Projects

As explained above, Article 16.6 of the *Law on Import Tax and Export Tax*, dated June 14, 2005, provides duty exemptions on imported fixed assets, spare parts, and accessories for projects entitled to investment incentives. Pursuant to *Decree No. 108/2006/ND-CP, Detailing and Guiding the Implementation of a Number of Articles of the Investment Law*, projects in certain geographical areas, including industrial development zones, are "encouraged" and, hence, able to receive these incentives.

According to the GOV, SeAH VINA received duty exemptions because it is located in the Bien Hoa Industrial Zone.

This program was found countervailable in Bags from Vietnam Final Determination because the companies investigated in that case were located in industrial zones. The GOV

reports that the eligibility criteria for this program changed on October 1, 2010, pursuant to *Decree 87/2010/ND-CP Detailing the implementation of the Law on Import and Export Tax 2005*. However, Article 16.2 of this decree appears to grandfather benefits to companies that enjoyed these tax exemptions prior to October 1, 2010. The Department intends to seek additional information following this preliminary determination to confirm benefits to SeAH VINA extended beyond October 1, 2010, for this program.

SeAH VINA stated that, although eligible for these exemptions due to its location in an industrial development zone, it did not use this program. Rather, SeAH VINA claims it did not pay import duties because the Vietnamese customs law permits duty-free importation of components used to construct certain machinery. In this case, this “certain machinery” was a pipe forming mill and the applicable duty rate was zero.

In response to the Department’s request, SeAH VINA provided the customs documents associated with these imports. These documents indicate that SeAH VINA received these duty exemptions pursuant to the entitlements established by *Decree No 108/2006/ND-CP, Detailing and Guiding the Implementation of a Number of Articles of the Investment Law*. Relying on these import documents and the GOV’s statements concerning SeAH VINA’s eligibility for this program, we preliminarily determine that SeAH VINA used the program being investigated and that the applicable duties in the absence of the program were not zero.

Therefore, we preliminarily determine that the duty exemptions received by SeAH VINA on its imports of fixed assets, spare parts, and accessories are specific under section 771(5A)(D)(iv) of the Act, because they are limited to companies located in particular geographic areas. In addition, we preliminarily determine a financial contribution exists

pursuant to section 771(5)(D)(ii) of the Act, as the exempted duties represent revenue forgone by the GOV.

We are relying on the list of yearly imported fixed assets, spare parts, and accessories reported by SeAH VINA. Because SeAH VINA reported that all imports under this program were used to create fixed assets, we are treating all of SeAH VINA's reported imports as either spare parts or accessories. Consistent with Bags from Vietnam Final Determination, we are treating import duty exemptions on spare parts and accessories as recurring subsidies.

Because we do not have complete information on the tariff rates applicable to SeAH VINA's imports, we have relied upon Haiphong Hongyuan's reported import exemptions to calculate an average tariff rate to apply to SeAH VINA's reported imports. Although we are investigating Haiphong Hongyuan's tariff exemptions as specific to export processing enterprises or export processing zones, the tariff rates reported by Haiphong Hongyuan for its imports would also have been applicable to SeAH VINA in the absence of this subsidy program. For further description of this tariff rate calculation, see Memorandum from Austin Redington, International Trade Analyst, to Yasmin Nair, Program Manager, "Preliminary Calculation Memorandum for SeAH VINA," dated March 26, 2012 ("SeAH VINA Prelim Calc Memo"). We will seek additional information on the applicable tariff rates for SeAH VINA's imports for our final determination.

To calculate SeAH VINA's benefit under this program, we first determined the total value of duties exempted during the POI by multiplying the value of each item imported under this program by the facts available tariff rate described above. We then divided the total by SeAH VINA's total sales for 2010.

On this basis, we preliminarily determine that SeAH VINA received a countervailable subsidy of 0.04 percent ad valorem under this program. See SeAH VINA Prelim Calc Memo.

II. Programs Preliminarily Determined To Have Been Not Used By Respondents or To Not Provide Benefits During the POI

A. Preferential Lending to the Steel Industry

Petitioners claim that according to GOV policy, projects in specified industries are eligible for preferential loans or debt restructuring. They argue that this is evidenced by the GOV's designation of steel as a spearhead industry. Further, Petitioners claim that the GOV exerts control over nominally commercial banks to provide debt restructuring, loan forgiveness, and preferential lending to the Vietnamese steel industry, and that these industrial policies have resulted in preferential loans to manufacturers of circular welded pipe products.

In response to our questionnaire, the GOV provided numerous planning documents pertaining to the steel industry. The GOV submitted *Resolution 56/2006/QH11 on June, 29, 2006 on five-year social-economic development plan for the period of 2006-2010* (see GOV IQR at Exhibit 7); the Resolution 62/2006/NQ-HDND by Dong Nai People's Council on the targets, tasks and solution for socio-development and security of the city 2006-2010 (see GOV IQR at Exhibit 32); Resolution 08/2006/NQ-HDND by Hai Phong People's Council on the city plan for socio-economic development plan for 2006-2010 (see GOV IQR at Exhibit 33); *Decision 145/2007/QD – TTg, Approving the master plan on development of Vietnam Steel period 2007-2015 with regard to the year 2025*, dated September 4, 2007 (see GOV IQR at Exhibit 12); *Decision 134/2001/QD-TTg, Approving the overall planning for development of steel industry until the year 2010*, dated September 10, 2001 (see GOV IQR at Exhibit 13); and *Decision No. 55/2007/QD – TTg, Approving the List of Priority Industries and Spearhead Industries for the*

2007-2010 Period with a Vision to 2020, and a Number of Incentive Policies for These Industries (see GOV IQR at Exhibit 6).

Based on our review of these plans, circular welded pipe is not listed among the steel industry products designated for financial support, though other specific steel industry products are listed. The GOV confirmed that circular welded pipe is not the subject of any of the projects identified in the planning documents. Further, the GOV clarified that the designation of a spearhead or priority industry is provided under Decision 55/2007/QĐ-TTg, and only steel draft and special-use steel are designated as priority industries during 2007-2010. The GOV defined special-use steel as high-quality steel for use by the defense industry, electrical engine manufacturing and ship building. It did not define “steel draft,” but claims that circular welded pipe is neither considered steel draft nor special-use steel, and circular welded pipe manufacturing is not designated as a priority industry.

The Department also asked the GOV to explain whether circular welded pipe is covered by the development objectives of *Resolution 08/2006/NQ-HĐND*. The GOV responded by stating that Resolution 08/2005/NQ-HĐND sets forth the goals for development of Haiphong City from 2006-2010 and lists sectors in which Hai Phong City hopes to achieve further development. See GOV IQR at 4. The GOV also stated that a sector listed in the plan does not entitle that sector to any form of investment preference. Rather, the ability to provide investment preferences rests largely with the central government; the provincial government can only assist industrial sectors in terms of administrative policies, which must be explicitly provided for in decisions issued by the people’s committee. *Id.* The GOV added that circular welded pipe production is not an encouraged industry in Haiphong City because circular welded pipe is a low value-added product, and current production capacity exceeds market demand. *Id.*

Based on this information, we preliminarily determine that circular welded pipe was not part of a state targeted, or encouraged, industry or project; and that the various plans that relate to the promotion of the Vietnamese steel industry do not cover the production of circular welded pipe. Furthermore, the respondent producers of circular welded pipe are not hot-rolled steel manufacturers, a type of steel production that is referenced in the GOV steel industry plans. We intend to confirm the accuracy of the information provided by the GOV for this program at verification.

B. Provision of Land for Less Than Adequate Remuneration (“LTAR”) in Encouraged Industries or Industrial Zones

Petitioners claim that the GOV provides a land-rent reduction or exemption program for encouraged industries or enterprises in industrial zones.

As explained above, Haiphong Hongyuan is located in Do Son Hai Phong Industry Zone. Haiphong Hongyuan rents its land directly from the industrial development corporation (“IDC”) Hai Phong Do Son Industrial Zone Joint Venture Company, which is a joint-venture between the Hai Phong Construction and Development Infrastructure Group and Asia Glorious Development Ltd. of Hong Kong, a 100 percent foreign enterprise.

According to Article 35.8 of Decree 29/2008/ND-CP, the provincial People’s Committee is responsible for “carrying out the procedures for leasing or allocating land in industrial zones {and} economic zones in accordance with the law on land and relevant laws.” Article 36.1 of the same law states that “{t}he Management Committee is an agency under the provincial People’s Committee which directly performs the function of State administration with respect to industrial zones and economic zones within the province or city under central authority in accordance with this Decree and relevant laws.” See GOV IQR at Exhibit 41. However, the

GOV informed us that the IDC, not the management committee, is responsible for developing the land and contracting with enterprises to locate in the zone. According to the GOV, the management committee, in this case the Hai Phong Export Processing Zone and Industrial Zone Authority, “plays no role in the negotiations between the infrastructure development company and the enterprise.” See GOV SQR at 14. The GOV’s claim is supported by Haiphong Hongyuan, which informed us that “Haiphong Hongyuan leased the land-use rights from the Haiphong Doson {Industrial Joint Venture Company} as detailed in the land lease agreement included at Exhibit 17-A.” Haiphong Hongyuan’s lease agreement shows that, although the agreement is subject to the “management rules and regulations of Hai Phong Export Processing Zone and Industrial Zone Authority and Hai Phong Do Son Industrial Zone,” the contracting parties are Hai Phong Do Son Industrial Joint Venture Company and Haiphong Hongyuan. See Haiphong Hongyuan IQR at Exhibit 17. Haiphong Hongyuan also provided a memorandum of understanding predating its establishment, between Hai Phong Do Son Industrial Joint Venture Company and MAT Holdings, Inc., which summarizes the result of negotiations between the two parties for Haiphong Hongyuan’s land. See Haiphong Hongyuan IQR at Exhibit 18. Thus, we preliminarily determine that the price of Haiphong Hongyuan’s land and the terms of its lease were established through negotiations between Haiphong Hongyuan (or its parent company) and Hai Phong Do Son Industrial Joint Venture Company. Additional information on which we are basing our determination cannot be discussed in this notice because the GOV designated it business proprietary. See Haiphong Hongyuan Prelim Calc Memo.

The Department has found that when an industrial zone is part of a larger jurisdiction, and the larger jurisdiction is responsible for providing land use rights throughout the jurisdiction, the provision of such rights within the industrial zone is regionally specific under section

771(5A)(D)(iv) of the Act.³ However, in this instance, the authority to negotiate the price and enter into land use contracts in the Hai Phong Do Son Industrial Zone rests with the Haiphong Doson Industrial Joint Venture Company. As such, the provision of land use rights within this industrial zone is not limited to an enterprise or industry located within a designated geographical zone. Therefore, we are preliminary determining that Haiphong Hongyuan did not receive a benefit, and did not use this program.

We are not finding this program “not countervailable” because the allegation involved a national law that authorizes exemptions and reductions in land use fees in the country’s designated industrial zones.⁴ Because this program is authorized under a national law, the exemptions and reductions of land use fees may vary from industrial zone to industrial zone. Thus, our determination with respect to the provision of land use rights to Haiphong Hongyuan is limited to the industrial zone in which the company is located.

Although the record as a whole supports the above finding, there are some apparent contradictions in the GOV’s response. For example, in its first supplemental questionnaire response, the GOV states that “the industrial zone management authority is limited to the specific industrial zone that it administers, and has no land use right authority beyond the industrial zone.” However, on the next page, the GOV states that “{t}he regulating authority is called the Hai Phong Economic Zone Authority. This authority has jurisdiction over all of the industrial zones within Hai Phong City.” See GOV SQR at 15-16. The documentation provided by the GOV and Haiphong Hongyuan indicates that the entity is called the “Hai Phong Export

³ See, e.g., Oil Country Tubular Goods From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination, 74 FR 64045 (December 7, 2009), and accompanying Issues and Decision Memorandum at 20.

⁴ See Law on Investment of the Socialist Republic of Vietnam, National Assembly No. 59/2005/QH11 at Article 36, and the Government of Vietnam Decree No. 108/2006/ND/CP Providing Guidelines for Implementation of a Number of Articles of Law on Investment at Article 26.

Processing Zone and Industrial Zone Authority.” See, e.g., Haiphong Hongyuan IQR at Exhibit 17; see also GOV SQR at Exhibit GOVS1-21. We intend to seek additional clarification from the GOV before issuing our final determination.

SeAH VINA’s land payments and contract are through a provincial government. However, the land rent was established by a contract that preceded the January 11, 2007 cut-off date. Thus, consistent with the Bags from Vietnam Final Determination, we are preliminarily determining that this program does not provide benefits to SeAH VINA.

C. Government Provision of Water for LTAR in Industrial Zones

Petitioners claim that occupants of industrial zones are offered special rates on water. Information in the questionnaire responses shows that both Haiphong Hongyuan and SeAH VINA sourced their water from industrial development companies. The GOV stated that water wholesalers provided the industrial development companies with the water. Moreover, both companies paid the applicable tariff rates for their water and there was no separate rate for companies located within the industrial zones.

On this basis, we preliminarily determine that the GOV’s provision of water is not specific to the industrial zones in which the respondents are located. Thus, we preliminarily determine that this program is not used.

D. Land Rent Reduction or Exemption for Exporters

E. Land Rent Reduction or Exemption for FIEs

F. Export Promotion Program

G. New Product Development Program

H. Income Tax Preferences for Encouraged Industries

I. Income Tax Preferences for Enterprises in Industrial Zones

- J. Tax Refund for Reinvestment by FIEs*
- K. Income Tax Preferences for FIEs*
- L. Income Tax Preferences for Exporters*
- M. Preferential Lending for Exporters*
- N. Import Duty Preferences for FIEs*

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated individual rates for respondents individually investigated, SeAH VINA and Haiphong Hongyuan. We have also calculated an all-others rate. Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all-others rate by weight-averaging the individual subsidy rates by each company's exports of the subject merchandise to the United States. However, the all-others rate may not include zero and de minimis rates or any rates based solely on the facts available. As SeAH VINA's preliminary calculated subsidy rate is de minimis, Haiphong Hongyuan's calculated rate is being used as the All Others rate.

We preliminarily determine the total estimated net countervailable subsidy rates to be:

Exporter/Manufacturer	Net Subsidy Rate
SeAH Steel VINA Corp.	0.04%
Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd.	8.06%
All Others	8.06%

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of circular welded pipe from Vietnam that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the Federal Register, and to require a cash deposit or bond for such entries of merchandise in the amounts indicated above. However, we are not directing CBP to suspend liquidation of entries produced by SeAH VINA, because its rate is de minimis.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Due to the anticipated timing of verification and issuance of verification reports, case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. See 19 CFR 351.309(c)(i) (for a further discussion of case briefs). Rebuttal briefs must be filed within five

days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. See 19 CFR 351.309(c)(2) and (d)(2).

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will be held two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must electronically submit a written request to the Assistant Secretary for Import Administration using IA ACCESS, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) the party's name, address, and telephone; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. Id.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

March 26, 2012__
(Date)

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